

**DISTRICT OF COLUMBIA  
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

DELORES FLOWERS  
Respondent

Case No.: I-02-90000

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**FINAL ORDER**

**I. Introduction**

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 22 Chapter 38 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 90000) served April 30, 2002, the Government charged Respondent Delores Flowers with a violation of 22 DCMR 3819.7 for allegedly providing care in a Mental Health Community Residence Facility (MHCRF) without proper licensure. The Notice of Infraction alleged that Respondent violated § 3819.7 on March 5, 2002 at 715 Quebec Place, N.W., and sought a fine of \$1,000.

Respondent filed a response to the Notice of Infraction. Respondent failed to indicate in the response whether she wished to enter an answer of Admit, Admit with Explanation or Deny to the charge listed in the Notice of Infraction as required by the Civil Infractions Act and as set forth in the instructions included on the Notice of Infraction form. D.C. Official Code § 2-1802.02. Accordingly, on June 18, 2002, this administrative court issued an order requesting Respondent to clarify her answer to the Notice of Infraction. The June 18, 2002 order further

provided that, to the extent Respondent failed to clarify her answer, an answer of Deny would be entered on her behalf in accordance with D.C. Official Code § 2-1802.02(b), and a hearing scheduled.

Respondent failed to respond to the June 18, 2002 order. Accordingly, a hearing was scheduled for September 10, 2002. Lynne Riggins, the Department of Mental Health (“DMH”) charging official in this case, appeared at the hearing on behalf of the Government. Respondent did not appear, and pursuant to D.C. Official Code § 2-1802.03(b), the hearing proceeded in her absence. Based upon the testimony of the Government’s witness and my evaluation of her credibility, the admitted documentary evidence and the entire record in this matter, I now make the following findings of fact and conclusions of law:

## **II. Findings of Fact**

1. At all times relevant to this matter, Respondent Delores Flowers owned or controlled the property located at 715 Quebec Place, N.W. (the “Property”).

2. On March 5, 2002, Ms. Riggins visited the Property and observed Respondent and her staff providing services to mentally ill persons that are consistent with the services provided by a licensed MHCRF.<sup>1</sup> *See* Petitioner’s Exhibits (“PX”) 100-01.

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<sup>1</sup> Although the level of the particular services offered will differ depending on the type of licensed MHCRF, MHCRF services are those generally designed to support a resident’s Individual Treatment Plan requirements. *See* 22 DCMR 3828. In turn, such services may include the development of independent living skills; the providing of medications as prescribed by a physician; the development of therapeutic diets as planned by a dietician or nutritionist; and the providing of housekeeping and laundry services for residents. *See generally* 29 DCMR Ch. 38.

3. As of March 5, 2002, Respondent did not have a license to operate the Property as a MHCRF. PX 100-01.

4. The Government subsequently removed from the Property those persons residing there whom the Government identified as requiring the support of a licensed MHCRF. PX 101.

5. Despite repeated representations from Respondent to the Government that she would obtain a license to operate a MHCRF after the March 5, 2002 inspection, as of September 10, 2002, Respondent had not obtained such a license.

### **III. Conclusions of Law**

1. 22 DCMR 3819.7 provides:

Each person who requires licensure, certification or registration to provide care to residents shall be licensed, certified, or registered under the laws and regulations of the District of Columbia.

The term “residents” as used in this section has not been defined for purposes of 22 DCMR Chapter 38. *See* 22 DCMR 3899. However, when read in *pari materia* with the other provisions of that Chapter, I conclude that the term refers to those persons residing in a MHCRF. *See, e.g., Holt v. United States*, 565 A.2d 970, 975 (D.C. 1989) (discussing use of the *in pari materia* approach as a tool in statutory construction); *DOH v. Argunyege*, OAH No. C-01-80053 at 5 n.7 (Final Order, June 8, 2001) (same). In addition, a MHCRF is defined as:

A publicly or privately owned residence that houses individuals, eighteen (18) or older, with a principal diagnosis of mental illness and who require twenty-four hour (24 hr.) on site supervision, personal assistance, lodging, and meals and who are not in the custody of the District of Columbia Department of Corrections.

22 DCMR 3800.2. In turn, in order to be found liable for a violation of 22 DCMR 3819.7, a respondent must be a “person” who “requires licensure, certification or registration to provide

care” to persons residing in a “publicly or privately owned residence that houses individuals . . . with a principal diagnosis of mental illness . . .” 22 DCMR §§ 3819.7 and 3800.2.

2. In this case, Ms. Riggins testified that she observed Respondent and her staff providing services to mentally ill residents that were consistent with those services provided by a licensed MHCRF. In order to lawfully provide such services in the first instance, however, the MHCRF must be licensed by the Department of Mental Health. *See* 22 DCMR 3800.6. As the person who owns or controls the site on which this unlicensed MHCRF is operating, and as the person who has provided MHCRF-type services to residents at that site, Respondent can be held liable for the failure of her facility to have the proper “licensure, certification or registration” required to operate as a MHCRF in the District of Columbia, absent some form of organizational structure not evidenced on this record. *See Vuitch v. Furr*, 482 A.2d 811, 815 (D.C. 1984) (discussing parameters of corporate liability); *DOH v. Linde*, OAH No. I-00-10004 at 5-6 (Final Order, August 6, 2001) (noting that courts have “recognized that the doctrine of limited liability is designed to shield agents, officers and shareholders from liability for corporate debts and vicarious tort liability[;] it does not shield them from criminal and regulatory liability connected with their unlawful acts or omissions”); *see also* 22 DCMR 3199 (defining “person” for purposes of the general Community Residence Facility regulations as “an individual, firm, partnership, corporation, company, or association and including any administrators, guardians, trustees, directors, and agents”); 22 DCMR 3800.5 (providing for provisional licensure of MHCRFs in accordance with 22 DCMR Ch. 31).

3. A fine of \$1,000 is authorized for a first violation of this regulation, and it will be imposed without reduction. 16 DCMR §§ 3201.1(a)(1) and 3241.1(d).

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this \_\_\_\_ day of \_\_\_\_\_, 2002:

**ORDERED**, that Respondent shall pay a fine in the amount of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

**ORDERED**, that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

**ORDERED**, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 10/08/02

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Mark D. Poindexter  
Administrative Judge